

The terminal dates of the parties passed without any evidence being presented beyond the regular hearing testimony of claimant. The case was not formally submitted to the Administrative Law Judge by letter or otherwise. Nevertheless, an award was entered by the Administrative Law Judge based upon the record as he found it to exist as of the date of his decision. Respondent appeals contending there was an understanding between counsel that additional evidence was to be presented and pointing out that the Administrative Law Judge failed to consider respondent's and the Fund's cross-examination of claimant taken by deposition on February 28, 1995. The specific issues raised by respondent are as follows:

- (1) Jurisdiction of the Administrative Law Judge to issue an award without affording respondent an opportunity to present evidence.
- (2) Failure of the Administrative Law Judge to consider the cross-examination of the claimant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The facts are known to the parties. We need not repeat them herein. The record reflects that a motion to extend terminal dates was not before the Administrative Law Judge at the time he issued his Award. As there is no order by the Administrative Law Judge on a request for extension of terminal dates, that issue is not before us. The record does reflect, however, that the deposition testimony of claimant taken February 28, 1995 was not considered by the Administrative Law Judge when he issued his Award. This is because the transcript was never filed of record. The February 28, 1995 Continuation of the Regular Hearing was taken within the terminal dates of the respondent and Fund as originally established by the Administrative Law Judge. At the conclusion of that deposition claimant indicated that she wanted the opportunity to read and sign the deposition transcript in order to make any necessary corrections. During oral arguments counsel for the parties agreed that a transcript of the deposition was forwarded to claimant's counsel. However, it was never presented to claimant for signature and never filed with the Division of Workers Compensation. Accordingly, at the time the Administrative Law Judge entered his Award the transcript of the Continuation of the Regular Hearing was not a part of the administrative file.

The Appeals Board finds that this case should be remanded to the Administrative Law Judge for a determination based upon the entire record including the February 28, 1995 Continuation of the Regular Hearing by Deposition of Yvette Clardy. Upon remand, the Administrative Law Judge may exercise his discretion with regard to any motions that may come before him with respect to extending terminal dates to present additional evidence or otherwise.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Robert H. Foerschler dated January 3, 1996, should be, and is hereby, set aside and the matter is remanded to the Administrative Law Judge for further proceedings and/or determination consistent with the findings and conclusions enumerated herein. The Appeals Board does not retain jurisdiction over this case.

IT IS SO ORDERED.

Dated this ____ day of June 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Bertica Dominguez-Calbi, Kansas City, MO
J. Paul Maurin, III, Kansas City, KS
Thomas Kelly Ryan, Overland Park, KS
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director